

ID: CCA_2011093012013337

Number: **201141019**

Release Date: 10/14/2011

Office:

UILC: 6222.03-00

From:

Sent: Friday, September 30, 2011 12:01:42 PM

To:

Cc:

Subject: RE: TEFRA question

Section 6222 requires a partner to file consistently with a TEFRA partnership return. If he fails to do so, and does not file a notice of inconsistent treatment, we may make a computational adjustment of the inconsistently reported item without issuing an FPAA. If a partnership is required to file a Form with its partnership return disclosing "hot assets" subject to ordinary gain treatment upon the sale of a partnership interest, but fails to do so, it is unclear whether we could deem the partnership to have no hot assets for purposes of a section 6222 computational adjustment.

This issue may be moot, however, to the extent we issue a notice of deficiency recalculating gain on the sale of the partnership interest. Under *Roberts v. Commissioner*, 94 T.C. 853, 860 (1990), the parties will be bound by how the partnership books and records characterize the assets if they are not characterized on the partnership return.

If the partnership books and records make no characterization of the assets either way, then the only way to conclusively establish the character is to open a TEFRA partnership proceeding and issue an FPAA to make that determination.